

Application No. 10/724,795 Amendment - 05212007

**REMARKS**

The Notice Requiring Excess Claims Fees mailed 05/08/2007 in relation to the amendment to the Office Action of December 7, 2006 has been carefully reviewed and considered. As a response to the Notice Requiring Excess Claims Fees mailed 05/08/2007, Applicant has (as advised) canceled the new claims – which were merely the initially conditionally withdrawn claims slightly amended.

**Initial Restriction Traverse Re-Asserted:** Applicant hopes the Examiner appreciates the burden of a restriction on a small inventor in the form of additionally filing fees, searching fees, issue fees and maintenance fees. With respect to the initial Restriction by the Examiner "because the combination does not require a repulsive taste agent", Applicant respectfully notes that the primary references Stickley and Carroll et al (used in the Office Action of December 7, 2006 to reject the elected claims 21-29) have nothing to do with a "repulsive taste agent" but everything to do with "the combination". These primary references would in all honesty and probability be the same references to be used in examining a divisional containing the withdrawn claims, if Applicant was forced to file one. Applicant therefore is respectfully asserting, re-asserting a traverse of the initial restriction of the "combination" claims 1-19. Instead of adding them as new claims (the way Applicant attempted to do on 4/28/07) Applicant in all fairness should be allowed to, and has by this amendment added back or reinstated the original claims 1-19 that were restricted. The amendment as now stands contains Claims 1-29, which is the exact number of total claims as originally filed and paid for.

With respect to the Office Action of December 7, 2006, Applicant acknowledges the rejections (i) of Claims 21, 22, 24 and 25 under 35 USC 102(b) over Stickley; (ii) of Claims 20, 21, 23, 26 an 28 under 35 USC 103 over Carroll et al in view of Japanese publication No. 06-206368; (iii) of Claim 27 under 35 USC 103 over the rejection of claim 23 and Bloch et al and (iv) of Claim 29 under 35 USC 103 over the rejection of claim 28 and Clodfelter et al.

Application No. 10/724,795 Amendment - 05212007

In order to advance prosecution of this Application towards issuance as a patent, Applicant has amended the specification, specifically paragraph [0039] of the published version of the specification by adding clarifying language clearly corresponding the description to the drawings of FIGS. 2, 3A, 3B and 10. It is respectfully submitted that such language merely corresponds the description to the drawings and therefore adds no new matter. In addition, Applicant has amended independent Claims 20 and 21, as well as dependent claims 22-29, and has retained original Claims 1-19 (for a total of 29 claims initially paid for) in order to more fully and clearly claim what applicant regards as his invention. The application as amended thus has a total of 29 claims, 4 of which are independent, and hence no additional fees are necessary.

As drawn, described and now clearly and fully claimed in original and amended Claims 20-29, applicant's invention is directed to a safe toy balloon closure and sealing device that includes a generally rectangular flat member having convoluted perimeter consisting of a first end, a second end opposite the first end, a first side edge and a second side edge opposite the first side edge; (b) a balloon neck-receiving aperture spaced and separate from the perimeter, formed through the generally flat member and between the first end and the second end, and including a tongue portion protruding thereinto for positioning two different portions of a twisted balloon neck passed through the neck receiving aperture; (c) inserting passage means for inserting a balloon neck from the first end into the balloon neck receiving aperture, the inserting passage means comprising a V-shaped notch on the first end, and a slit from the V-shaped notch into the neck receiving aperture; (d) at least one non-aligned stretched neck retaining means formed on at least one of the second end, the first side edge and the second side edge at a location that not aligned with the inserting passage, for creating at least one angled sharp bend and seal in a balloon neck being stretched from the balloon neck receiving aperture for reinsertion through the inserting passage means and through the balloon neck receiving aperture; thereby effectively closing and sealing the balloon neck without tying and without a risk of the balloon neck unraveling and causing

Application No. 10/724,795 Amendment - 05212007

premature balloon deflation; and (e) a safety device in the form of a repulsive taste agent applied to the generally flat member.

In the office action, the examiner rejected (i) Claims 21, 22, 24 and 25 under 35 USC 102(b) over Stickley; (ii) Claims 20, 21, 23, 26 and 28 under 35 USC 103 over Carroll et al in view of Japanese publication No. 06-206368; (iii) of Claim 27 under 35 USC 103 over the rejection of claim 23 and Bloch et al and (iv) Claim 29 under 35 USC 103 over the rejection of claim 28 and Clodfelter et al.

Reasonably read and considered, Stickley (with respect to the rejection of (i) Claims 21, 22, 24 and 25 under 35 USC 102(b) over Stickley), discloses a balloon holder comprising a cup-like device that has a ring defining an open top; arm portions divided by gaps between them that narrow down from the ring into a straight shank portion with slots in the shank. The distal end of the shank portion is hollow for receiving a balloon stick, and includes a bead. A twisted balloon neck is passed into the ring through the open top, out by means of one of the gaps, then wrapped around the shank portion and back under itself to seal.

Unlike the disclosure of Stickley, amended independent Claim 21, and dependent Claims 22, 24 and 25, are now directed to a generally rectangular flat member having a balloon neck receiving aperture that is spaced from and separate from a perimeter of the generally rectangular flat member, inserting passage means separate from the neck receiving aperture and formed in the generally rectangular flat member, and at least one stretched neck retaining means formed also therethrough. The neck receiving aperture includes a tongue portion protruding thereinto for positioning two different portions of a twisted balloon neck passed through the neck receiving aperture. Stickley clearly does not teach or suggest any of the underlined, functional structural features taught and claimed by Applicant.

It is therefore clear that amended independent Claim 21, and dependent Claims 22, 24 and 25, now include structural features and functions that are not taught or clearly suggested by Stickley. Accordingly, it is respectfully

Application No. 10/724,795 Amendment - 05212007

submitted that amended independent Claim 21, and dependent Claims 22, 24 and 25 are patentable under 35 USC 102(b) over Stickley.

Next, reasonably read and considered, Carroll et al (with respect to the rejection of (ii) Claims 20, 21, 23, 26 and 28 under 35 USC 103 over Carroll et al) discloses a generally flat closure disk 8 around which a stretched neck of a toy balloon is merely wrapped. The disk 8 includes a convoluted perimeter that defines three identical slots (12) that each open inwardly from the perimeter, and a solid nipple (20) located spaced and separate from the perimeter for receiving a retainer disk 24.

Applicant's independent Claims 20 and 21 have each been amended to now clearly include structural and functional features (as underlined below) that are not taught or clearly suggested by Carroll et al, even in view of Japanese publication No. 06-206368.

Specifically, Carroll et al does not teach or clearly suggest a (i) balloon neck-receiving aperture that is formed through the generally flat member, and that is spaced from and separate from the convoluted perimeter. Carroll et al also does not teach or clearly suggest (ii) including a tongue portion protruding into the neck receiving aperture for positioning two different portions of a twisted balloon neck passed through the neck receiving aperture. Furthermore, Carroll et al also does not teach or clearly suggest a separate balloon neck inserting passage means comprising (iii) a V-shaped notch on a first end of the convoluted perimeter, and a slit from the V-shaped notch into the neck receiving aperture;

Japanese publication No. 06-206368 allegedly merely discloses coating small articles with a bittering agent.

Carroll et al would be more like the non-rectangular embodiment of Applicant's claimed invention if the nipple 20 in Carroll et al was not a solid but a spaced and separate aperture 20", and if the disk 8 included a slit or slot [which it does not] from at least one of the perimeter slots 12 into such an aperture 20".

It is therefore respectfully submitted that amended independent Claims 20 and 21 clearly include structural and functional features [as underlined]

Application No. 10/724,795 Amendment - 05212007

above] that are not taught or clearly suggested by Carroll et al, even in view of Japanese publication No. 06-206368.

What has been said about independent claims 20 and 21 is also true of originally filed independent Claims 1 and 19. Each of independent claims 1 and 19 although each having a different scope from each of the independent Claims 20 and 21, also includes structural and functional features that are not taught or clearly suggested by Stickley, or as well by Carroll et al. The same is then true of Claims 2-18 which depend from independent Claim 1.

Accordingly, it is respectfully submitted that amended independent Claims 20, 21, and dependent Claims 23, 26 and 28 are therefore patentable under 35 USC 103 over Carroll et al even in view of Japanese publication No. 06-206368. Additionally, it is respectfully submitted that original independent Claims 1 and 19, and dependent Claims 2-18 are therefore also patentable under USC 103 over Carroll et al and/or Stickley.

With respect to the rejection of Claim 27 under 35 USC 103 over the rejection of claim 23 and Bloch et al (for Bloch et al merely and only disclosing an adhesive tape having a coating on another side thereof), Claim 27 depends from Claim 23 which depends from Claim 21 that has been clearly shown above to be patentable under 35 USC 103 over Carroll et al even in view of Japanese publication No. 06-206368. Accordingly, it is respectfully submitted that Claim 27 is patentable under 35 USC 103 over Carroll et al even in view of Japanese publication No. 06-206368 and Bloch et al, since Bloch et al also does not teach what Carroll et al fails to teach.

With respect to the rejection of Claim 29 under 35 USC 103 over the rejection of claim 28 and Clodfelter et al (for merely and only disclosing Denatium Benzoate as a bittering agent), Claim 29 depends from Claim 28 that has been clearly shown above to be patentable under 35 USC 103 over Carroll et al in view of Japanese publication No. 06-206368. Accordingly, it is respectfully submitted that Claim 29 is patentable under 35 USC 103 over Carroll et al in view of Japanese publication No. 06-206368 and Clodfelter et al.

Application No. 10/724,795 Amendment - 05212007

Accordingly, Applicant respectfully requests reconsideration and allowance of Applicant's amended Claims 20-23, with depending claims 24-29 and original Claims 1-19.

No additional fee is believed to be required for this amendment; however, if any additional fees are necessary, other than the issue fee, Applicant would like to be so notified.

In the event the Examiner considers personal contact advantageous to the disposition of this case, she is hereby authorized to call Applicant, Robert H. Murray, at Telephone Number 585-223-1225, Fairport, New York.

Respectively submitted,

*Robert H Murray*

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Robert H Murray (Applicant)

Date May 22, 2007